

HOUSE BILL REPORT

HB 3121

As Reported by House Committee On:

Commerce & Labor

Appropriations

Title: An act relating to implementing the recommendations of the joint legislative task force on the underground economy in the construction industry.

Brief Description: Implementing the recommendations of the joint legislative task force on the underground economy in the construction industry.

Sponsors: Representatives Conway, Green, Hunt, Kenney, Roberts, Haler, Morrell, Hankins, Ericks, Appleton, Eddy, Wood, Sells, Chase, Ormsby, Hasegawa, Williams, Moeller, Campbell, Simpson, Rolfes, McIntire and Darneille.

Brief History:

Committee Activity:

Commerce & Labor: 1/29/08, 1/31/08 [DPS];

Appropriations: 2/8/08, 2/11/08 [DP2S(w/o sub CL)].

Brief Summary of Second Substitute Bill

- Provides a civil penalty for persons who falsify information on a contractor registration application.
- Creates a public works contracting "strike" for certain contractor registration and industrial insurance violations and provides for a one-year bar from bidding on public works contracts for repeat violations.
- Provides for additional contractor compliance staff and auditors, and provides for a social marketing campaign aimed at consumers regarding hiring of unregistered contractors.
- Implements other recommendations of the Joint Legislative Task Force on the Underground Economy in the Construction Industry (Task Force).
- Extends the Task Force to December 31, 2008.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Crouse.

Staff: Joan Elgee (786-7106).

Background:

In 2007 the Legislature enacted SB 5926, which created the Joint Legislative Task Force on the Underground Economy in the Construction Industry (Task Force). The Task Force was directed to formulate a state policy to establish cohesion and transparency between state agencies to increase oversight and regulation of the underground construction economy. Over the 2007 interim, the Task Force met six times and adopted recommendations at its final meeting. The Task Force recommendations included recommendations on penalties, enforcement, data sharing and detection, and education and outreach.

Any person working as a construction contractor in this state must be registered with the Department of Labor and Industries (L&I). An applicant for registration must have a Unified Business Identifier (UBI) number if required by the Department of Revenue (DOR), which is generally if the gross income of the business is \$12,000 a year or more. The Department of Labor and Industries must deny a contractor application and suspend a contractor registration under certain conditions, including if there is an unsatisfied related judgement against the contractor. Certain violations of the contractor registration provisions subject the person to a penalty of no more than \$10,000. These include falsifying a registration number and soliciting work as a contractor without being registered.

Under prevailing wage laws, a contractor who files a false statement regarding prevailing wages or fails to file a statement is subject to a civil penalty and not permitted to bid on a public works contract until the penalty is paid. This is considered a prevailing wage "strike" and if the contractor is found to have violated the law a second time in five years, the contractor is "barred" from bidding on public works contracts for one year.

Penalties are set forth for industrial insurance violations. An employer who engages in business without obtaining industrial insurance coverage, or engages in business after a certificate of coverage has been revoked, or knowingly misrepresents the amount of payroll or employee hours is subject to penalty.

Employers must maintain a record of the UBI number of construction contractors and electrical contractors with whom they contract.

Information maintained by the Employment Security Department (ESD) that is private and confidential may be disclosed to other agencies for official purposes under certain conditions.

Agencies who receive information from the ESD are prohibited from further disclosing the information unless the disclosure is directly connected to the original purpose.

Summary of Substitute Bill:

Contractor registration applicants must have a UBI number, regardless of the size of the business. The Department of Labor and Industries (L&I) must deny a registration application and suspend an active registration if L&I determines that the contractor falsified information on the application (unless the error was inadvertent), or the contractor does not have a valid and active certificate of registration with the DOR. A contractor who falsifies information on a registration application, unless the error was inadvertent, is subject to a penalty of up to \$10,000.

The following violations constitute a "strike" for purposes of public works contracting: willful violation of laws relating to industrial insurance reporting of payroll and hours or maintenance of coverage; and performing work as an unregistered contractor. A contractor is barred from bidding on any public works project for one year if, within a five-year period, the contractor commits any combination of two or more of these violations.

Employers must keep records of the compensation paid to construction contractors and electrical contractors with whom they contract, in addition to the UBI number.

Agencies receiving information from the ESD may disclose it to another agency if the agency would be otherwise permitted to obtain the information.

The Department of Labor and Industries is directed to add staff to the fraud audit infraction and revenue contractor team and both L&I and the ESD must hire additional auditors. If funds are available, funding must be dedicated to the Office of the Attorney General for contractor compliance cases. The Department of Labor and Industries must create an expanded social marketing campaign aimed at consumers and warning them of the risks and potential consequences of hiring unregistered contractors.

The Department of Labor and Industries must establish a pilot project with local jurisdictions to explore ways to improve the collection and sharing of building permit information. Participation by local jurisdictions is voluntary and L&I must report back to the appropriate committees of the Legislature by November 15, 2013.

The Washington State Institute for Public Policy (Institute) must organize an advisory committee, with the assistance of L&I, the ESD, and the DOR, to establish benchmarks for monitoring of activities recommended by the Task Force. The Institute must report back to the appropriate committees of the Legislature by December 31, 2008.

The term of the Task Force is extended to December 31, 2008.

Substitute Bill Compared to Original Bill:

The substitute bill limits the contractor registration penalties constituting a "strike" for purposes of public contracting to performing work as an unregistered contractor (and not other contractor registration penalties). Performing work as an unregistered contractor constitutes a "strike" whether or not the violation was willful or a repeat violation. The substitute bill also modifies the benchmark language to conform to the recommendations of the Task Force.

Housekeeping changes were made to correct terms and references, correct placement of language, and remove codification of a section.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is a comprehensive approach that addresses almost all the areas the Task Force discussed. Additional staff is key as L&I gets a nine to one return on investigations. The penalties and stronger enforcement will help curb the underground economy problem and the benchmarks will provide effective measurement. The Washington State Institute for Public Policy conservatively estimated \$109 million in lost tax revenue from the underground construction economy.

The work of the Task Force is not done. There is some uncharted territory in supply/demand issues.

(Opposed) None.

Persons Testifying: Dave Johnson, Washington State Building and Construction Trades Council; Rick Slunaker, Associated General Contractors of Washington; Bob Abbott, Washington and North Idaho District Council of Laborers; Amy Brackenbury, Building Industry Association of Washington; Carolyn Logue, Contractors Bonding and Insurance Company; and John Littell, Pacific Northwest Regional Council of Carpenters.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Commerce & Labor. Signed by 31 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Chandler, Cody, Conway, Darneille, Ericks, Fromhold, Grant, Green,

Haigh, Hunt, Kagi, Kenney, Kessler, Kretz, Linville, McDonald, McIntire, Morrell, Pettigrew, Priest, Ross, Schmick, Schual-Berke, Seaquist, Sullivan and Walsh.

Minority Report: Do not pass. Signed by 2 members: Representatives Anderson and Hinkle.

Staff: Alex MacBain (786-7288).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Commerce & Labor:

A null and void clause was added, making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 8, 2008.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) The bill is a result of a task force looking into the issue of the underground economy in the construction industry and includes the recommendations of the task force made up of representatives of the industry, labor, and legislative members. In the task force report, the Washington Institute for Public Policy estimates that the tax revenue lost to the state and for unpaid workers compensation is \$109 million. There is broad labor and business support for the bill. It is important to put unscrupulous contractors out of business, and clean up the industry. The spending contained in this bill will ensure that the people in the industry who are doing the right thing have a competitive advantage.

(Opposed) None.

Persons Testifying: Representative Conway, prime sponsor; Carolyn Logue, Contractors Bonding Insurance Companies; Dave Johnson, Washington Building and Construction Trades Council; and John Littel, Carpenters.

Persons Signed In To Testify But Not Testifying: None.